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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DARRIN BERNARD REID,

Defendant and Appellant.

C085992

(Super. Ct. No. 15F02454)

Defendant Darrin Bernard Reid appeals from a judgment entered after his no contest plea to inflicting corporal injury resulting in a traumatic condition on a cohabitant (Pen. Code, § 273.5, subd. (a); count one);<sup>1</sup> assault with a deadly weapon (§ 245, subd. (a)(1); count two); assault with a caustic chemical with the intent to injure and disfigure (§ 244; count three); and admission of the special allegation that count one was

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

committed under circumstances involving domestic violence (§ 12022.7, subd. (e)), in exchange for a sentence of seven years. The trial court sentenced defendant to three years for count one and four years for the special circumstance. Additionally, defendant was sentenced to a concurrent three-year term for count two. The trial court also imposed, but stayed pursuant to section 654, a three-year sentence for count three.

Defendant argues the trial court violated section 654 by failing to stay his three-year concurrent sentence for count two, assault with a deadly weapon, because his stabbing the victim with scissors was merely part of the same ongoing argument which culminated in his setting the victim on fire with a flammable liquid. The People concur that the sentence for count two should have been stayed, but disagree on the basis for staying that count. Under the People's analysis, count two must be stayed because defendant's stabbing of the victim was part of the factual basis supporting his plea for count one.

We disagree and will affirm the judgment for the reasons explained herein.

## BACKGROUND

The victim testified at defendant's preliminary hearing that she lived with defendant, and had dated him for 10 years. He came home between 6:00 and 6:30 p.m. on the day of the crime. He was in a strange mood and had been drinking. About 30 minutes later, defendant entered the victim's bedroom and accused her of stealing his father's clothes and selling them. Later, the victim went to the kitchen for a snack, and defendant again accused her of stealing and selling his father's clothes. She started to leave, and defendant spit in her face. He then retrieved some kitchen scissors and, after trying to kick her, stabbed her in the arm.

The victim returned to her bedroom and got into bed. Sometime later, defendant entered her bedroom with a bottle of lighter fluid and sprayed it on her. He said, "I'm going to burn you up, bitch," and then lit her on fire. She rolled to put it out, and

defendant jumped on her. The victim kicked the defendant, grabbed some clothes from the floor, and escaped their home.

Defendant was held to answer. He later pleaded no contest to inflicting corporal injury resulting in a traumatic condition on a cohabitant (§ 273.5, subd. (a); count one); assault with a deadly weapon (§ 245, subd. (a)(1); count two); assault with a caustic chemical with the intent to injure and disfigure (§ 244; count three); and admitted the special allegation that count one was committed under circumstances involving domestic violence (§ 12022.7, subd. (e)), in exchange for a sentence of seven years.

The parties stipulated to the factual basis supporting his plea as follows: “On April 18, 2015 in the County of Sacramento, the [defendant], did commit a felony, violation of Penal Code Section 273.5, in that he did willfully and unlawfully inflict corporal injury resulting in a traumatic condition upon [the victim], a person with whom the defendant was cohabitating and had a dating relationship.

“On that date and time, the victim and the defendant were living together. The defendant stabbed the victim in the left arm with a pair of scissors. He then poured lighter fluid on her and ignited that lighter fluid with a lighter causing the victim to sustain anywhere from first degree to [second] degree burns on her chest, arm and neck, that constitutes great bodily injury, in violation of Penal Code section 12022.7(b).

“And on that same date due to the scissors, a violation of Penal Code Section 245(a)(1), in that he did willfully and unlawfully commit assault upon [the victim] with a deadly weapon.

“And as to Count Three, a violation of Penal Code section 244, in that he did willfully and unlawfully and maliciously throw upon [the victim] that lighter fluid which is a corrosive, acidic, flammable substance, a caustic chemical with the intention to injure and disfigure her.”

The probation department’s presentence report relayed that defendant stabbed the victim with scissors about 2:00 a.m. Defendant repeatedly entered the victim’s room, the

last time setting her on fire. The lapse of time between the stabbing and defendant lighting the victim on fire was not discussed.

The trial court denied defendant probation and sentenced him to three years for count one and four years for the special circumstance. The court sentenced defendant to a concurrent three-year term for count two, and imposed, but stayed pursuant to section 654, a three-year sentence for count three because “it involved the same facts and circumstances as underlie the circumstances for Count 1.” Thus, defendant was sentenced to a total aggregate prison term of seven years. This was consistent with the recommendation and analysis of the probation department presentence report.

Defendant timely appealed.

## DISCUSSION

Defendant argues the trial court violated section 654 by failing to stay his three-year concurrent sentence for count two, assault with a deadly weapon, because stabbing the victim with scissors was merely part of the same ongoing argument which culminated in him setting the victim on fire. We disagree.

As the Supreme Court explained in *People v. Harrison* (1989) 48 Cal.3d 321: “It is well settled that section 654 protects against multiple punishment, not multiple conviction. [Citation.] The statute itself literally applies only where such punishment arises out of multiple statutory violations produced by the ‘same act or omission.’ [Citation.] However, because the statute is intended to ensure that defendant is punished ‘commensurate with his culpability’ [citation], its protection has been extended to cases in which there are several offenses committed during ‘a course of conduct deemed to be indivisible in time.’ [Citation.]

“It is defendant’s intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.] We have traditionally observed that if all of the offenses were merely incidental to, or were the

means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.]

“If, on the other hand, defendant harbored ‘multiple criminal objectives,’ which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, ‘even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.’ [Citation.]” (*People v. Harrison, supra*, 48 Cal.3d at p. 335.) “A trial court’s express or implied determination that two crimes were separate, involving separate objectives, must be upheld on appeal if supported by substantial evidence. [Citation.]” (*People v. Brents* (2012) 53 Cal.4th 599, 618.)

Here, the trial court imposed sentences for counts one and two, while staying count three, impliedly determining that defendant stabbing the victim was a separate act from the corporal injury on a cohabitant count and that defendant renewed his intent to harm the victim after each act. We find substantial evidence supports these findings. Defendant stabbed the victim with the scissors near the kitchen. Then, after the victim had retreated to her room and gone back to bed, defendant entered that room, doused her in lighter fluid, and set her on fire. While the precise lapse of time between these two acts is unknown,<sup>2</sup> we find them adequately separated in time and space to allow the trial court to reasonably conclude that defendant had sufficient time to reflect and renew his intent to harm the victim. (See *People v. Trotter* (1992) 7 Cal.App.4th 363, 368 [defendant may be separately punished for three shots each requiring a separate trigger pull which were separated by seconds and minutes].)

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<sup>2</sup> The victim did not specifically recall when she was stabbed. She testified everything occurred within hours and began around 7:30 or 8:00 p.m. However, she was not admitted to the hospital until 4:45 a.m. Given that neighbors took her to the hospital shortly after her escape, it is reasonable to infer that the burning occurred much closer to 4:45 a.m. and that the stabbing had occurred much earlier.

We are not persuaded by defendant's argument that the stabbing was part of the same course of conduct as setting the victim on fire with a flammable liquid, and we find his authority, *People v. Mejia* (2017) 9 Cal.App.5th 1036, distinguishable. In that case, the court found section 654 precluded punishment for both torture (through a course of conduct theory) and the underlying assaultive events comprising the torture. (*Mejia*, at pp. 1045-1046 ["because all of the acts of spousal rape and of infliction of corporal injury on a spouse were included among the acts underlying the torture count and were essential to satisfying an element of that offense, section 654 precludes imposition of unstayed sentences" for those counts].) Unlike course of conduct torture, here, a violation of the law prohibiting infliction of the corporal injury resulting in a traumatic condition on a cohabitant (§ 273.5, subd. (a)) is completed after a single instance of "willful and direct application of physical force upon the victim resulting in a wound or injury." (*People v. Johnson* (2007) 150 Cal.App.4th 1467, 1477.) "[W]here multiple applications of physical force result in separate injuries, the perpetrator has completed multiple violations of section 273.5." (*Ibid.*)

Thus, the trial court was presented with two alternative actions by the defendant that would have completed all necessary elements for this offense: (1) stabbing the victim with scissors or (2) dousing her with lighter fluid and lighting her on fire. (See *People v. Johnson, supra*, 150 Cal.App.4th at p. 1477.) We cannot quibble with the trial court's reasonable selection of defendant's lighting the victim on fire as the factual predicate for the corporal injury offense, which is consistent with the court's staying imposition of sentence on count three. We also find the trial court could have reasonably determined that the stabbing of the victim sometime before setting her on fire in a different part of their home was a separate act, divisible in time and space, which was also not necessary to, nor facilitative of, the corporal injury count premised upon lighting the victim on fire. Section 654 does not preclude multiple punishment in these circumstances. (See *People v. Nubla* (1999) 74 Cal.App.4th 719, 730-731 [section 654

did not preclude punishment for both assault with a deadly weapon and corporal punishment of a spouse where one offense neither facilitated, nor was incidental to, the other].)

We are also unconvinced by the People's unsupported assertion that the trial court should have stayed punishment for the stabbing described in count two because that stabbing was recited in the factual basis supporting defendant's plea to count one. We have not located any authority dealing with this exact situation, but *People v. Assad* (2010) 189 Cal.App.4th 187, is instructive. In that case, the defendant argued that he could not be separately punished for corporal injuries occurring within the same period as his conviction for torture on a course of conduct theory. (*Id.* at pp. 200-201.) However, given the evidence presented at trial, the defendant failed to show that the corporal injury counts were part of the course of conduct upon which the torture conviction was based. (*Id.* at p. 201.) Further, the defendant's section 654 arguments concerning his sentences for mayhem and torture failed because the evidence presented established multiple acts satisfying the legal requirements for both counts. (*Assad*, at p. 200.) Thus, given our conclusion that the corporal injury count was independently supported by defendant lighting the victim on fire with a flammable liquid, the trial court did not abuse its discretion in imposing a concurrent sentence for count two, defendant's separate and earlier act of stabbing her with scissors.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

ROBIE, J.